REMARKS

The Advisory Action mailed May 8, 2006 both refused entry of the proposed amendment "after final" and indicated that Applicant's previous request for reconsideration did not place the application in condition for allowance. Reconsideration is requested for the following reasons:

1. The Examiner has misstated the claims and the effect of the unentered amendment, which is now entered herewith.

The Examiner states that the amendment did not place the application is condition for allowance because "the originally filed claims included a 'bounded interval' when the current claims of the applicant were presented the 'bounded interval' was not included. Thus, applicant changed the 'scope' of the claims."

Applicant understands the Examiner to be saying that Applicants attempted to broaden the claims and, therefore, the outstanding rejections still applied to those claims. The problem is that Applicants' claims do not and have not recited a "bounded interval" and did not enlarge the scope of the claims. In the amendment filed March 15, 2006 (not entered at that time), it is true that claim 2 was enlarged to the extent that the words "periodically," and "encoded" were deleted. There was no antecedent basis for "encoded" and there was no need for the word "periodically" to distinguish over the prior art of record. A "bounded interval" was never present nor removed.

Claim 2 also was amended to state that the first packet sent to the second user represents the first packets comprising the missed portion of the stream. This is either simply a clarification or a narrowing of claim 2.

Claim 3 was amended to narrow that claim and recite that the series of data packets that is transmitted happens to be a "cached" series of data packets. Such amendment, obviously, does not enlarge the scope of claim 3.

Most amendments will change the scope of a claim, save clarifying amendments, so the Examiner's statement that Applicants changed the scope of the claims has no bearing on whether the amendment should have been entered.

2. Hoffman is Not a Bar

The Examiner's statement that "Hofmann is a Technical Report made publically available by Bell Labs in 1999. The authors and the technical community treat Hofmann as a publically available technical report" is a statement with no relevance whatever. It certainly is not a statement that explains why the amendment did not place the application in condition for allowance. As Applicants pointed out previously, the rejection was defective not because the Hofmann paper was not a printed publication but, rather, because there was insufficient (arguably no) evidence that it was published more than a year before Applicants' filing date. A rejection under §102(b) cannot be maintained on the basis of a publication unless the publication was, in fact, published more than a year before Applicants' filing date. That others viewed the Hofmann paper as a publication does not say ***when*** it became a publication. Any reasonable interpretation of the record does not rule out the possibility that the Hoffman paper was published April 27, 1999, two days too late to establish a statutory bar. The burden is on the Examiner, not on the Applicants, to establish the publication date. Accordingly, Hofmann should be removed as a reference and the claims should be allowed.

The Advisory Action, also states, in item 13, "see Katherine Gho's [sic] homepage." It does not indicate *why* Applicants should see Ms. Guo's homepage. Having scanned the printout supplied by the Examiner, Applicants can only *guess* that the Examiner is citing this paper to support her proposition that Hofmann et al. was published and therefore eligible as a printed publication. Again, however, Applicants do no challenge that Hofmann is a printed publication, but nothing in Ms. Guo's citation of Hofmann reveals a publication date and establishes ***when*** it became one. On page 5 of the printout, the Hofmann paper is listed as item 7 and the bibliography only recites a month, April, not a day within the month.

For the foregoing reasons, the claims are now all in condition for allowance.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Dated: June 15, 2006

Respectfully submitted,

By: _____

Steven J. Henry
Registration No.: 27,900
WOLF, GREENFIELD & SACKS, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
(617) 646-8000

x06/15/2006x